

August 30, 2001

COMMISSION VOTING RECORD

DECISION ITEM: SECY-01-0131

TITLE: RULEMAKING PLAN: REVISION OF APPENDIX E, SECTION IV.F.2, TO 10 CFR PART 50, CONCERNING CLARIFICATION OF EMERGENCY PREPARATION EXERCISE PARTICIPATION REQUIREMENTS FOR CO-LOCATED LICENSEES

Chairman Meserve and Commissioners Dicus and Merrifield approved in part and disapproved in part while Commissioner McGaffigan disapproved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 30, 2001.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-01-0131

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X	X			X	8/8/01
COMR. DICUS	X	X			X	8/27/01
COMR. McGAFFIGAN		X			X	7/27/01
COMR. MERRIFIELD	X	X			X	8/2/01

COMMENT RESOLUTION

In their vote sheets, Chairman Meserve and Commissioners Dicus and Merrifield approved in part and disapproved in part. They agreed to pursue the rulemaking to address the ambiguity in the regulations associated with emergency planning requirements for licensees co-located at the same site, in combination with the future Part 50, Appendix E rulemaking arising from the FEMA Strategic Review Steering Committee Initiative. Commissioner McGaffigan disapproved the staff's recommendation and preferred the "no rulemaking" option. He felt that the circumstances that are the subject of the proposed rule are unique to one or two well understood locations and, as such, do not merit the time and resources that would be required to support rulemaking. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 30, 2001.

Commissioner Comments on SECY-01-0131

Chairman Meserve

I join in Commissioner Merrifield's observation that there is an expectation among our stakeholders that the Commission will address through rulemaking the ambiguity in our emergency planning regulations with respect to the frequency of exercise participation between co-located licensees and offsite authorities. See 10 C.F.R. Part 50, App. E, § IV.F.2. I thus believe that the Commission should proceed with this rulemaking. I also share his view, however, that this matter might be handled most efficiently by resolving the ambiguity in the context of the anticipated rulemaking concerning emergency planning arising from FEMA's Strategic Review Steering Committee recommendations. I would thus combine this proposed rulemaking with the future proposed rulemaking arising from the FEMA recommendations.

Commissioner Dicus

I approve the staff's recommendation to proceed to rulemaking, under Option 2, to address the ambiguity in our regulations associated with emergency planning requirements for licensees co-located at the same site.

I agree with Commissioner Merrifield that the central issue in considering whether to proceed to rulemaking is the impact on public trust and confidence. In this case, I believe the Commission is best served by moving forward with rulemaking to clarify the ambiguity in our emergency planning regulations. I also believe that the companion efforts associated with Option 2 are worthwhile.

The development of guidance on the types of emergency preparedness interface activities and interactions that would test and maintain interface functions for co-located licensees and offsite authorities will have a positive impact on safety. I envision even a broader safety benefit and, in the development of this guidance, I encourage the staff to consider how this guidance may be used by and further support all power reactor licensees in their actions to ensure that adequate emergency response capabilities (such as the coordination of command and control among the control room, technical support center, and the emergency operations facility) are maintained during the interval between biennial exercises.

Since some resources efficiencies may be gained, I join the Chairman and Commissioner Merrifield and support combining this rulemaking effort with the anticipated Part 50, Appendix E rulemaking effort associated with FEMA initiatives. If the Commission rejects the anticipated rulemaking proposal, this effort can then be de-coupled and proceed independently.

Commissioner McGaffigan

I approve the "no rulemaking" option proposed by the staff.

The circumstances which are the subject of the proposed rule are unique to one or two well understood locations and, as such, do not merit the time and resources (2 FTE!) that would be required to support rulemaking. I note that the staff has not budgeted for the rulemaking and would therefore have to delay or defer other activities to support it. The current case is more properly addressed by exemption and/or staff guidance, than by rulemaking.

I appreciate the staff's reminder that they are working on a separate rulemaking plan in conjunction with a FEMA companion effort to allow offsite authorities the option of foregoing one biennial exercise within a six-year period and fulfilling the requirement by alternate means. I will make a separate judgment on the merits of that rulemaking plan when and if it is submitted to the Commission.

Commissioner Merrifield

I appreciate the considerable efforts the staff has dedicated to communicating with stakeholders on this sensitive matter. While I support clarifying the regulations through rulemaking, I do not support the rulemaking approach recommended by the staff in Option 2. Instead, I support combining the two Part 50, Appendix E rulemakings that are discussed in SECY-01-0131.

I appreciate Commissioner McGaffigan's concerns regarding the time and resources (2 FTE) necessary to support rulemaking as proposed in Option 2. There are, in fact, several reasonable arguments for not pursuing rulemaking. First, only two sites have co-located licensees, the Indian Point site and the Nine Mile Point/James A. FitzPatrick site. Thus, the rulemaking would apply to a very limited number of licensees. Second, as discussed in both SECY-00-0238 and SECY-01-0131, the staff, in consultation with FEMA and the State of New York, has already concluded that the practice of alternating participation in the biennial full participation exercises, with the current level of other interactions between the licensees and offsite authorities at Indian Point and Nine Mile Point/FitzPatrick, is acceptable and that there is reasonable assurance that appropriate measures could be taken to protect the health and safety of the public in the event of a radiological emergency at these sites. Third, the staff indicated that they have not budgeted for this rulemaking and would therefore have to delay or defer other activities to support it. Finally, the staff indicated that a "no rulemaking" option would be acceptable, and that guidance could be developed to properly address this matter.

Despite these justifiable reasons, I still believe it would be prudent for the agency to clarify our regulations through rulemaking. Revising 10 CFR Part 50, Appendix E, Section IV.F.2 would clearly resolve the ambiguity caused by the current rule language and clarify the exercise requirements for licensees that are co-located on a site. The current rule language has caused a great deal of concern among some of our stakeholders, and has resulted in the staff dedicating an enormous amount of resources to address these concerns. Clarifying rule language would bring closure to this sensitive and resource-intensive matter.

In addition, for me, the most compelling reason to proceed with rulemaking centers around stakeholder confidence and trust. In previous correspondence with stakeholders, such as the April 11, 2001 letter from the Chairman to Mr. Jim Riccio of Public Citizen, the agency has signaled that it intends to pursue rulemaking to address the ambiguity associated with Appendix E. In that particular letter, we state:

"... the staff intends to submit a rulemaking plan to the Commission to clarify the emergency planning requirements for co-located licensees. The proposed rulemaking will include the development of guidance, with stakeholder input, on the types of emergency planning activities and coordination that would be appropriate for co-located licensees in the intervals between full participation exercises."

Furthermore, in SECY-01-0131, the staff indicates that it coordinated the rulemaking approach with FEMA and the State of New York Emergency Management Office and that these organizations expressed support for this approach. Simply put, I believe there is an expectation among many of our stakeholders that the agency will pursue rulemaking to correct the ambiguity of our regulations. Given the legacy of this matter, and given that the agency is in the process of rebuilding confidence and trust with the stakeholder community most interested in this matter, I do not believe it would be prudent for the NRC to change the course (i.e, not pursue rulemaking) that these stakeholders perceive us to be taking. I believe that some stakeholders would perceive such a course change as the NRC reneging on a commitment. Such a perception, regardless of whether it is valid or not, may have adverse implications for the agency. We may in fact find that the resources needed to address these implications offset some, if not all, of the resources we may save by not pursuing rulemaking.

I believe there is a solution which positively addresses both the resource and public confidence matters discussed above. This solution involves combining the two separate rulemakings that are discussed in SECY-01-0131. Specifically, in addition to the rulemaking pertaining to co-located licensees, the staff indicates that it is also working on a separate rulemaking plan to revise Part 50, Appendix E, to allow offsite authorities the option of foregoing one biennial exercise within a six-year period and fulfill the requirement by alternate means. Apparently, this rulemaking is necessary to support one of the initiatives that resulted from FEMA's Strategic Review Steering Committee recommendations. The staff indicates that if the timing allows, they may combine these two rulemakings to achieve some efficiencies. The staff has informally confirmed to me that if the two rulemakings were combined, significant "administrative" efficiencies could be achieved. As a result, the resources associated with the co-located licensee aspect of the rulemaking would likely be considerably less than indicated in SECY-01-0131. Given that there are no safety issues compelling the staff to act more quickly on the rulemaking pertaining specifically to co-located licensees, I can find no reason why the "timing" should not allow for these two rulemakings to be combined.

In sum, I believe the two Part 50, Appendix E rulemakings that are discussed in SECY-01-0131 should be combined. I believe combining the two rulemakings at least partly addresses the legitimate resource concerns that have been raised. It also allows the staff to proceed along a rulemaking course; a course that the staff has invested considerable time and effort conveying to a wide range of interested stakeholders. Staying the course on rulemaking should preclude any potential stakeholder misimpression that the NRC is reneging on a perceived promise to correct the ambiguity in the existing regulatory language. I believe the staff should provide the Commission with a rulemaking plan which encompasses both initiatives and a revised resource estimate for the rulemaking effort. Should the circumstances surrounding the rulemaking effort associated with the FEMA Strategic Review Steering Committee initiative significantly change, the staff should promptly notify the Commission. My vote on SECY-01-0131 should in no way be construed to indicate support for that particular rulemaking effort. I will reserve judgement on the merits of that rulemaking until more information is provided to the Commission. However, the staff should be particularly sensitive to the implications that proposal could have on co-located licensees.